

APPLICATION OF LAFAYETTE PLACE ASSOCIATES AND LAFAYETTE PLACE HOTEL ASSOCIATES, FOR APPROVAL OF A FIFTH AMENDMENT TO THE REPORT AND DECISION OF THE BOSTON REDEVELOPMENT AUTHORITY AUTHORIZING AND APPROVING THE LAFAYETTE PLACE RETAIL/COMMERCIAL PROJECT AND THE LAFAYETTE PLACE HOTEL PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A AND St. 1960, c. 652, AS AMENDED.

On September 6, 1979, the Boston Redevelopment Authority (the "Authority") approved the Report and Decision authorizing and approving the application of Lafayette Place Associates ("LPA") for approval of the Lafayette Place Project under Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960; that September 6, 1979, Report and Decision was subsequently amended by a First Amendment to the Report and Decision approved by the Authority on April 3, 1980, a Second Amendment to the Report and Decision approved by the Authority on February 19, 1983, a Third Amendment to the Report and Decision approved by the Authority on March 31, 1983, and a Fourth Amendment to the Report and Decision approved by the Authority on December 20, 1984.

The September 6, 1979, Report and Decision included the Authority's approval for the transfer of the hotel portion of the Lafayette Place Project from LPA to Lafayette Place Hotel Associates ("LPHA"). On November 2, 1984, LPA transferred title to the hotel portion of the Lafayette Place Project to LPHA but retained title to the retail/commercial portion of the Lafayette Place Project. By the Fourth Amendment to the Report and Decision approved by the Authority on December 20, 1984, the Authority ratified and confirmed its September 6, 1979, approval of the transfer of the hotel portion of the Lafayette Place Project from LPA to LPHA. By virtue of an assignment and assumption agreement dated February 1, 1985, among LPHA, LPA, the City of Boston and the Authority, LPHA succeeded to the ownership of the Lafayette Place Hotel Project under Chapter 121A and Chapter 652 of the Acts of 1960.

The undersigned, LPA and LPHA (the "Applicants"), hereby jointly apply to the Boston Redevelopment Authority (the "Authority") pursuant to Chapter 121A of the General Laws, Chapter 652 of the Acts of 1960 and the Rules and Regulations issued by the Authority, for approval by the Authority of a Fifth Amendment to the Report and Decision approved by the Authority on September 6, 1979, as amended. By this application, the Applicants request the following specific changes to the Report and Decision, as amended:

1. Amend Article B ("The Project") of the Report and Decision, as amended, by adding thereto the following new paragraph:

"In addition, the Project may contain health, athletic and wellness facilities located partly within the improvements on Parcel A [i.e., the hotel portion of the Project] and partly within the improvements on Parcel B [i.e., the retail/commercial portion of the Project], but operated as a single facility. The approximate location of such athletic facility on the third and fourth levels of the Project is shown on the attached "Exhibit 3.1: Drawings of the Athletic Facility," consisting of two sheets, which drawings are incorporated herein by this reference."

2. Amend Article E ("Cost of the Project") of the Report and Decision, as amended, by adding thereto the following new paragraph:

"Although portions of the Project's health, athletic and wellness facility will be located within the improvements on Parcel A [i.e., the hotel portion of the Project], the entire facility will be managed by a single operator under lease agreements with Lafayette Place Associates, the owner of Parcel B [i.e., the retail/commercial portion of the Project]. The lease agreements with the operator of the athletic facility will provide for that operator to finance the cost of the fixtures and improvements necessary for the athletic facility and will permit such financing to include leasehold mortgage financing, if necessary. Rent from the Project's athletic facility shall be included in the gross income of the owner of Parcel B [i.e., the retail/commercial portion of the Project] under Section 10 of Chapter 121A and shall be treated as rent from a tenant of Parcel B for purposes of the 6A Tax Agreement with the City of Boston relating to Parcel B."

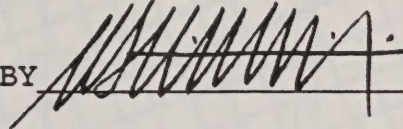
3. Substitute "Exhibit A: Statement of Permission Required for Project to Deviate from Zoning Laws", consisting of three pages attached hereto and made a part hereof, for Exhibit A of the Report and Decision, as amended. The purpose of this amendment is twofold: to add certain specific zoning deviations needed for the athletic facility and to ratify and confirm that the zoning deviations for the Project previously approved by the Authority on February 17, 1983, and March 31, 1983, are still in effect and applicable to the Project's athletic facility. Zoning compliance for the athletic facility, which has horizontal and vertical leasehold property lines and consists of functionally and structurally integrated improvements that are located partly within the hotel air rights parcel owned by Lafayette Place Hotel Associates and partly within the retail/commercial air rights Parcel owned by Lafayette Place Associates, requires

such deviations from the Boston Zoning Code, which assumes the horizontal layout of property ownership and little functional relationship between improvements located in parcels held in separate ownership.

Executed as of this 6th day of March, 1986.

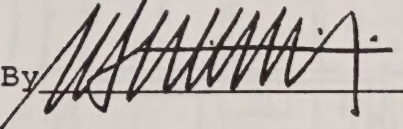
LAFAYETTE PLACE ASSOCIATES

By Mondev Mass., Inc.
Its General Partner

BY  _____

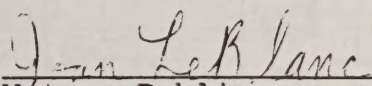
LAFAYETTE PLACE HOTEL
ASSOCIATES

By Mondev Mass., Inc.
Its General Partner

By  _____

March 6, 1986

Then personally appeared before me Marco Tonci Ottieri, who being duly sworn, made oath to the best of his knowledge and belief the statements contained in the foregoing Application are true.

 _____
Notary Public

My commission expires: 11/1/88

EXHIBIT A

Statement of Permission Required for Project to Deviate From Zoning Laws

The following is a statement of all deviations from the Boston Zoning Code and Enabling Act which so far as known to the Applicants will be required for the construction and use of the Project.

I. Parcels A and B:

A. Section 2-1(26) (definition of "lot"): deviations to the extent needed to allow each air rights parcel to constitute an individual zoning lot.

B. Section 2 of Chapter 665 of the Acts of 1956, as amended (municipal uses in districts where dwellings are permitted): deviations to permit portions of the air rights parcels to be used for "municipal purposes" to the extent such deviations are necessary for the uses of the plaza, malls, and other public easement areas.

C. Article 8, Table A (Uses):

*(1) Item 22 (hospital, clinic or professional offices accessory to a hospital [Conditional]): deviation to permit portions of the Project's athletic facility to be used for sports medicine and sports therapy uses from time to time which might be classified under Item 22.

*(2) Items 30 and 38 (private club; recreational or sports center conducted for profit): deviations to permit portions of the air rights parcels to be used as health, athletic and wellness facilities without regard to the requirements of Items 30 and/or 38, including without limitation the requirement of Item 30 that such facility be operated for members only and/or the requirement of Item 38 that such facility be customarily open to the public at large and not exclude any minor by reason of age as a prevailing practice.

(3) Item 36A (sale over the counter of on-premises prepared food or drink for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out [Conditional]): deviations to permit uses classified under Item 36A.

* Indicates deviations not previously noted.

(4) Item 52 (outdoor place of assembly operated for profit [Conditional]): deviation to permit uses from time to time which might be classified under Item 52 within outdoor interior parts of the Project, e.g., the plaza and terrace overlooking the plaza.

(5) Item 68 (industrial uses [Conditional]): deviations to permit the repair of cameras and photographic equipment, musical instruments, optical equipment, clocks and similar precision instruments, electronic equipment, and similar uses.

(6) Item 71 (ancillary uses [Conditional]): deviations to permit uses within the Parking Facility ancillary to the uses of the air rights parcels, and to permit uses within the air rights parcels and the adjacent Jordan Marsh property ancillary to uses within the Project without such uses being subject to any area limitations which might be imposed by Article 10.

(7) Item 72A (accessory swimming pool): deviation to permit the Project's^{**} swimming pool to be located without regard to any required setback from the lot lines, and to eliminate the requirements of a "fence" screening it from such lot lines.

(8) Item 78 (accessory hotel uses): deviations to permit uses accessory to the hotel which could be classified under Item No. 78, whether or not such uses are conducted "wholly within the building and entered solely from within the building" and without such uses being subject to any limitations imposed by Article 10.

(9) Items 85 (accessory use): deviation to permit laundry facilities accessory to the hotel and the Project's athletic facility^{**}, notwithstanding the fact that a "laundry plant" as defined in Item 45 is forbidden in a B-10 district.

D.. Article 10, Section 10-1 (limitation of area of accessory uses): deviations so as to make the area limitations of Article 10 inapplicable to 1) the plaza, malls, vertical and horizontal pedestrian circulation systems, and access and egress areas (to the extent that such areas might be classified as accessory uses), 2) to any areas devoted to uses accessory to the maintenance or operation of the building or structure, 3) to any areas devoted to accessory uses which would be allowed as of right (or permitted pursuant to the deviations listed in paragraph C above) if treated as primary uses, and 4) to any lobbies, meeting

^{**} Underlined language indicates deviations not previously noted.

rooms, ballrooms, kitchens, or customary employee facilities (to the extent that such uses might be classified as accessory uses).

E. Article 13; Section 13-4 (hotel as "dwelling"): deviations to permit the hotel and parts thereof to be regarded as other than a "dwelling" or "dwellings" for the purposes of applying the dimensional requirements of the Boston Zoning Code.

F. Articles 13 and 15 (floor area ratio): deviations to allow the air rights parcels each to have indeterminate floor area ratios, or to allow either or both to exceed the applicable floor area ratio limitations, so long as all of the improvements within the area bounded by Washington Street, Avenue de Lafayette, Chauncy Street, and the Jordan Marsh Store do not exceed the maximum floor area ratio of 10.0 if viewed as one large building on one large lot.

G. Articles 13, 18, 19, and 20 (yard requirements): deviations to eliminate any yard requirements along any of the lot lines of the air rights parcels, external or internal.

H. Article 21 (setbacks): deviations to eliminate setback requirements, if any, along any lot lines, external or internal.

I. Article 24, Section 24-1 and 24-2(c): deviations to permit the loading bay requirements to be met by the provision of 9 loading bays within the Parking Facility, for the joint use of the occupants of Parcels A and B in common with the City of Boston.

J. Section 24-2(a) and (c) (loading bays, design): deviation to permit the required access between Chauncy Street and the loading bays to be provided through the truck ramp under the Jordan Marsh Store.

II. Parcel C:

A. Article 2-1(26) (definition of "lot"): deviation to permit an air rights parcel to constitute a separate zoning lot.

M E M O R A N D U M

April 17, 1986

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: SUSAN ALLEN, ASSISTANT DIRECTOR FOR
DEVELOPMENT AND URBAN DESIGN
KELLY KING, ASSISTANT GENERAL COUNSEL
PAM WESSLING, PROJECT COORDINATOR

SUBJECT: FIFTH AMENDMENT TO CHAPTER 121A AGREEMENT FOR
LAFAYETTE PLACE FOR A MINOR MODIFICATION TO ADD A
HEALTH CLUB FACILITY

Lafayette Place Associates and Lafayette Place Hotel Associates are jointly requesting approval from the Authority for a Fifth Amendment to the 1979 Report and Decision which approved the Lafayette Place Project under Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960.

September 28, 1979 the Authority voted to adopt the Report and Decision on the application of Lafayette Place Associates for approval of the Lafayette Place Project. The Report and Decision was subsequently amended on April 3, 1980; February 19, 1983; March 31, 1983; and December 20, 1984. These amendments were primarily concerned with hotel ownership as outlined in the attached application for a Fifth Amendment.

This application seeks the Authority's approval for amendments which would allow Lafayette Place Associates to alter the fourth floor of Lafayette Place to include a health club facility in the project, and to lease the facility to a single operator. Rent from the facility would be included in the gross income of Lafayette Place Associates under Section 10 of Chapter 121A and would be treated as rent from a tenant for purposes of the 6A Tax Agreement with the City of Boston relating to Parcel B, the retail/commercial portion of the Lafayette Place Project.

The proposed health club, approximately 41,500 square feet overall, would occupy currently unleased space on the third floor of Lafayette Place, existing space to be renovated on the fourth floor, and an 18,000 square foot addition to be added to the fourth floor. The fourth floor addition would require alterations to the main entrance portal. As indicated on the attached application, the facility includes space for racquetball and squash courts, a basketball court, aerobics and weightlifting rooms. The facilities will be open to membership from the general public and hotel guests. The anticipated occupancy date is Fall 1987.

Fifth Amendment to Chapter 121A Agreement
for Lafayette Place
Page 2

April 17, 1986

BRA staff has reviewed and approved schematic plans for the health club addition. We, therefore, recommend that the Authority adopt the Fifth Amendment to the 1979 Report and Decision which approved the Lafayette Place Project.

An appropriate vote follows:

VOTED: That the document presented at this meeting entitled: "Fifth Amendment to the Report and Decision on the Application of Lafayette Place Associates for the Authorization and Approval of a Project under Massachusetts General Laws (Ter. Ed.) Chapter 121A as amended, and Chapter 652 of the Acts of 1960, to be undertaken and carried out by a Limited Partnership formed under M.G.L. Chapter 109, and Approval to Act as an Urban Redevelopment Limited Partnership Under Said Chapter 121A" be and hereby is approved and adopted.

Boston Redevelopment Authority

Fifth Amendment to the Report and Decision on the Application of Lafayette Place Associates for the Authorization and Approval of a Project under Massachusetts General Laws (Ter. Ed.) Chapter 121A, as amended, and Chapter 652 of the Acts of 1960, to be undertaken and carried out by a Limited Partnership Formed under M.G.L. Chapter 109, and Approval to Act as an Urban Redevelopment Limited Partnership Under Said Chapter 121A.

Prior Proceedings. On September 6, 1979, the Authority approved and adopted a document entitled "Boston Redevelopment Authority Report and Decision on the Application of Lafayette Place Associates for the Authorization and Approval of a Project under Massachusetts General Laws (Ter. Ed.) Chapter 121A, as amended, Chapter 652 of the Acts of 1960, to be Undertaken and Carried Out by a Limited Partnership Organized Pursuant to M.G.L. c. 109 and Approval to Act as an Urban Redevelopment Limited Partnership Under said Chapter 121A". That Report and Decision was subsequently amended by a First Amendment to the Report and Decision approved by the Authority on April 3, 1980, a Second Amendment to the Report and Decision approved by the Authority on February 19, 1983, a Third Amendment to the Report and Decision approved by the Authority on March 31, 1983, and a Fourth Amendment to the Report and Decision approved by the Authority on December 20, 1984. The Mayor of the City of Boston approved these votes of the Authority on September 27, 1979, April 17, 1980, March 1, 1983, April 15, 1983, and January 16, 1985, respectively. Certificates of these votes and mayoral approvals were filed with the office of the City Clerk by the Secretary of the Authority on October 3, 1979, April 23, 1980, March 3, 1983, April 9, 1983, and January 17, 1985. On November 1, 1985, the Authority issued a Certificate of Completion for the Lafayette Place Project.

The September 6, 1979, Report and Decision included the Authority's approval for the transfer of the hotel portion of the Lafayette Place Project from Lafayette Place Associates ("LPA") to Lafayette Place Hotel Associates ("LPHA"). On November 2, 1984, LPA transferred title to the hotel portion of the Lafayette Place Project to LPHA but retained title to the retail/commercial portion of the Lafayette Place Project. By the Fourth Amendment to the Report and Decision approved by the Authority on December 20, 1984, the Authority ratified and confirmed its September 6, 1979, approval of the transfer of the hotel portion of the Lafayette Place Project from LPA to LPHA and approved the lease of the hotel portion of the Project to Swissotel Boston, Inc. (the "Hotel Lease"). By virtue of an assignment and assumption agreement dated February 1, 1985, among LPHA, LPA, the City of Boston and the Authority, LPHA succeeded to the ownership of the Lafayette Place Hotel Project under Chapter 121A and Chapter 652 of the Acts of 1960.

The Projects. The Projects are commonly known collectively as Lafayette Place. The Projects are located in two air rights parcels, Parcel A (the hotel project) and Parcel B (the retail/commercial project), bounded generally by Washington Street, Avenue de Lafayette, Chauncy Street and the northerly line of Avon Street (discontinued) in Boston.

The Projects, now complete, consist of a retail/commercial project of approximately 260,000 feet of gross retail mall space and hotel project of 504 rooms and suites, located above a parking garage owned by the City of Boston. The retail/commercial project is owned by LPA; the hotel project is owned by LPHA and operated by Swissotel Boston, Inc. under the Hotel Lease. The adjacent Parcel C, not included in the Projects, is not covered by the Application. The Projects and Project Area are more fully described in the Report and Decision of the Authority as amended.

On March 6, 1986, the Applicants submitted a request to amend the Report and Decision, as amended, to permit portions of both the retail/commercial project (Parcel B) and the hotel project (Parcel A) to be used as a single health, athletic and wellness facility, to grant additional zoning deviations needed for such facility, and to include rent from such facility in the gross income of the owner of Parcel B under Chapter 121A and for purposes of the 6A Tax Agreement with the City of Boston relating to Parcel B. The Hotel Lease, approved by the Authority in its December 20, 1984, approval of the Fourth Amendment to the Report and Decision, expressly provided for such a health, athletic and wellness facility.

Authority Action. Before making the findings and determinations hereinbelow set forth and approving the Application, the Authority has considered the Application itself, all documents and exhibits filed with it or referred to in it, the considered recommendation by the Authority's staff, and the arguments and statements made before the Board of the Authority.

Based on the foregoing, the Authority makes the following findings and determinations:

- A. Approval of Application. The Authority hereby ratifies and confirms its approval, on December 20, 1984, of the Hotel Lease, which provided in part for a single health, athletic and wellness facility to be located partly within the hotel project (Parcel A) and partly within the retail/commercial project (Parcel B).

The Authority hereby approves and consents to the Fifth Amendment to the Report and Decision on the Application of Lafayette Place Associates and Lafayette Place Hotel Associates as requested in the Application.

The Authority also hereby approves the additional zoning deviations for the Projects requested in the Application.

- B. No Fundamental Change in the Projects. The Authority hereby finds that none of the matters contemplated by the Application constitutes a fundamental change in the Projects or in the type and character of the buildings of the Projects.
- C. Effect on Environment. The Authority hereby finds that the requested changes to the Projects will have no adverse effect on the environment, and that all practicable and feasible means and measures have been taken, or will be utilized to avoid or minimize any damage to the Project.

In particular, such changes do not significantly increase any of the environmental consequences of the Projects that have previously been evaluated by the Authority.

In the opinion of the Chief General Counsel's Office, this Fifth Amendment does not represent a fundamental change to the Projects and does not require a public hearing.

